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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/992,328      | 11/19/2001  | Bryan Bergeron       | 8100.01             | 6056             |

7590 05/27/2004

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

DATE MAILED: 05/27/2004

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**MAILED**

**MAY 26 2004**

**GROUP 3700**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/992,328  
Filing Date: November 19, 2001  
Appellant(s): BERGERON, BRYAN

Shawn D. Sentilles  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed March 3, 2004.

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**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

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**(6) Issues**

The examiner withdraws the drawing objection, the claim objection and the rejection under 35 U.S.C. 112, first paragraph. Therefore, issues 1-3 are no longer subject to appeal (issues 1 and 2 were not appealable). Issues 1-4 are now moot. Issues 5-7 remain.

The appellant's statement of the issues in the brief is incorrect. However, appellant's numbering of the issues 5-7 will be preserved.

Issue 5 – Whether claims 1-10 are anticipated by Neville and Dixon.

Issue 6 – Whether claims 1-6 and 8-10 are anticipated by Watson.

Issue 7- Whether claims 4, 5, 9 and 10 are unpatentable over Neville or Dixon in view of Rosen.

**(7) Grouping of Claims**

Appellant's brief includes a statement that claims 1-10 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

|           |         |         |
|-----------|---------|---------|
| 5,950,857 | ROSEN   | 9-1999  |
| 5,645,191 | NEVILLE | 7-1997  |
| 4,235,348 | WATSON  | 11-1980 |

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4,146,157

DIXON, Sr. Et al.

3-1978

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

The examiner withdraws the drawing objection, the claim objection and the rejection under 35 U.S.C. 112, first paragraph. Therefore, issues 1-3 are no longer subject to appeal (issues 1 and 2 were not appealable). Issue 4 is now moot. Issues 5-7 remain.

Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Neville (5,645,191) and Dixon (4,146,157). This rejection is set forth in the prior Office Action mailed May 30, 2003.

Claims 1-6 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Watson (4,235,348). This rejection is set forth in the prior Office Action mailed May 30, 2003.

Claims 4, 5, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neville (5,645,191) or Dixon (4,146,157) in view of Rosen (5,950,857). This rejection is set forth in the prior Office Action mailed May 30, 2003.

**(11) Response to Argument**

**102 Rejections: Neville and Dixon**

Appellant remarks that the fluid diverter member is not shown in either reference (see second and third lines of last paragraph on page 13 of Brief). In the rejections made for both Neville and Dixon, the examiner states that the tapered side wall of the drinking containers are the fluid diverter members. Appellant also states that Neville and Dixon make absolutely no

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reference to a drinking vessel having a structure therein for compelling fluid through a drinking area (see second to fourth lines of last paragraph on page 14 of Brief). The Boards attention is directed to the fact that Neville is described as a “drinking container” that has a “drinking spout” and that column 2, lines 60-64 state: “The inner concave surface 28 is specifically structured to define a channel to direct liquid flow therealong from the interior 16 of the cup 12 to the top distal edge 22 when the cup is tilted from an upright position.” The inner concave surface 28 is part of the side wall. Dixon is somewhat similarly configured as Neville with a tapered cup side wall of concave shape with the side wall surfaces compelling fluid towards the mouthpiece 15 in a lid 10.

The fluid diverter is not a separate element but is of one-piece construction with the vessel. Appellant has made no attempt in the claims to delineate the diverter as being a separate piece from the vessel. Even though the diverter is introduced as a separate element, it is clear that the diverter is one-piece with the vessel. Therefore, nothing should prevent the inner curvature of the side wall from being considered a fluid diverter of one-piece construction with the vessel.

Re claim 2, the wedge shape is best shown in Fig. 3 wherein the U-shaped elongated trough 20 is shown to be wedge shaped in width rather than thickness. Claim 2 doesn't distinguish how the fluid diverter member is wedge shaped. Dixon discloses a wedge shape insofar as a wedge shaped portion of the side wall is wedge shaped.

Re claim 3, the concave interior of the side wall and the U-shaped elongated trough 20 provide a flow channel extending lengthwise along an outer surface (an the upper surface of

appellant's diverter member is the outer surface, the upper surface of the trough 20 is similarly configured and provides an outer surface as claimed).

Re claims 7 and 8, the lids of Neville and Dixon have an extension spout which extend upward and outward from an upper rim.

**102 Rejections: Watson**

Appellant states that the examiner hasn't identified any of the elements of the claim, in particular the fluid diverter member (see the first three lines of the second to last paragraph on page 16 of the Brief). The examiner stated "a wedge-shaped fluid diverter member (side wall and/or floor portion 18, 18' shown in Fig. 4 and 6) wherein upper extremities of the side wall are thicker than portions therebelow." Apparently, appellant has missed the association that the side wall of Watson is formed with first, a more vertically oriented portion of the side wall which tapers inwardly and downwardly along a concave inner surface and second, a more horizontally oriented portion of the sidewall (floor portion 18, 18' and 18"). With particularity, figures 4 and 6 show that the thickness of the floor portions 18 and 18' are wedge-shaped in cross section as are the upper portions of the more vertically oriented portions of the sidewall that extend downwardly from the floor portions. Also, the space formed between two rib members 26 as shown in fig. 5 and 6 form a flow channel which extends on the fluid diverter upwardly and outwardly from the curved part 30.

**103 Rejection: Neville or Dixon in view of Rosen**

Since appellant only argues that the fluid diverter is missing from Neville and Dixon, the rejection doesn't need to be responded to.

In conclusion, appellant has made statements that admit that the claims are broad in nature and state that the claims rely upon the fact that the written specification, particularly pages 8-10, and the figures, particularly Fig. 1A, 1C, 2B, 3A, 3B and 4A, describe in great detail a fluid diverter member 4 that differs markedly from the drinking container having inwardly sloping walls (see the paragraph bridging pages 14 and 15 of the Brief).

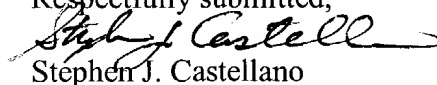
Although appellant's claims have been read in light of the specification, this doesn't mean that the claims should be interpreted by reading the limitations of the specification into the claims. One example, the language of claim 1 states "sloping downward ... towards an opposing side of said vessel." When read in light of the specification, this limitation means that the direction of slope of the diverter member should substantially or generally be from an upper position adjacent a sipping region to a downward an inward position towards an opposing side of said vessel. Neville, Dixon and Watson show the substantially same slope of the diverter member. It would be improper, however, to read additional disclosure limitations into claim 1 by interpreting the above claim 1 language to mean that the diverter member must slope downwardly to be contiguous with an opposing side of the vessel and contiguous with the bottom of the vessel.



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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Stephen J. Castellano

Primary Examiner

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sjc

May 14, 2004

Conferees

lwy

jcm

